

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

KYLE BENGSTON,)	
)	
PLAINTIFF,)	
)	
v.)	3:06-cv-00569-MEF
)	
)	
DAVID BAZEMORE, O.D. et. al)	
)	
DEFENDANTS.)	

REPORT OF PLAINTIFF'S EXPERT WITNESS

1.

I am Dr. Thomas J. Landgraf, O.D., F.A.A.O., a licensed optometrist in the State of Tennessee. I am a Professor at the Southern College of Optometry in Memphis, Tennessee, and am Chief of the Advanced Care Ocular Disease Service, Division of Clinical Education, at the Southern College of Optometry. I am familiar with the standard of care that must be employed by optometrists. My Curriculum Vitae (hereinafter "cv") is attached hereto as Exhibit "B" detailing my credentials and publications I have authored within the last ten (10) years.

2.

Based upon my review of office and exam notes of Dr. David Bazemore, O.D., regarding optical care rendered to Kyle Bengtson, Plaintiff in the above-styled lawsuit, and a review of notes regarding ophthalmologist care rendered to Kyle Bengtson by Dr. Gregory J. Sepanski, M.D., I offer the following opinion of the care provided to Kyle Bengtson by Dr. David Bazemore:

The optometrist, Dr. Bazemore, failed to meet the standard of care in regards to the

history and exam findings in this patient. On August 20, 2004, Mr. Bengtson complained of "halos around lights" in the right eye. This, combined with an exam history finding of asymmetric and elevated intraocular pressure in the right eye is highly indicative of narrow angle or angle closure glaucoma. The minimum workup per the optometric standard of care for this complaint includes an assessment of the anterior chamber angle via gonioscopy and goldmann tonometry at each visit. The optometrist failed to perform gonioscopy at any visit; goldmann tonometry was not performed at the office visit when the chief complain of "halos around lights" was elicited. The management of angle closure for an optometrist practicing minimum standard of care includes an immediate referral for lowering of intraocular pressure via medications and laser / surgical treatment. Since the workup was incomplete for this visit, a timely referral for management was not made; without a timely referral, the patient would be highly likely to suffer permanent vision loss. All optometrists have been thoroughly trained regarding the recognition and management of narrow angle and angle closure glaucoma. Goldmann tonometry and gonioscopy have been included for many years on the National Board of Examiners in Optometry clinical exam for optometric licensure.

Because of an incomplete assessment and timely referral of Mr. Bengtson to an ophthalmologist, permanent vision loss and optic nerve damage was caused.

3.

I reserve the right to amend this opinion and it is subject to further discovery, including the reading of Dr. Bazemore's deposition and Defendants' written discovery responses, which Plaintiff's counsel has informed me are not available at this time.

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4.

Exhibits which I may use as a summary of or support for my opinions include:

1. Models of the eye;
2. Diagrams of the eye;
3. Textbooks and articles including, but not limited to the following: Textbook:

Clinical Ocular Pharmacology, authors: Jimmy D. Bartlett and Sirel D. Jaanus, latest edition, publishers: Butterworth-Heinemann.

5.

Other cases where I have testified within the preceding four (4) years:

- (a) March 13, 2003 (deposition date) Commonwealth Of Kentucky.
Henderson Circuit Court, Civil Action No. 02-CI-00956, Elizabeth Mabe
v. J. Frederick Litke, O.D.; and
- (b) December 1, 2004 (deposition date) State of Arkansas, County of
Jefferson, Jefferson County Circuit Court, No. CV-2004-628-3, Pearlle
Mac Scott v. Dr. Robert Hogan.

6.

My fee for serving Mr. Kyle Bengtson as an expert in this matter is \$200 per hour to review the case and prepare reports, \$300 per hour for deposition testimony, and \$500 per day for trial testimony.

This 28th day of February, 2007.

Dr. Thomas J. Landgraf, O.D.
Dr. Thomas J. Landgraf, O.D., F.A.A.O.

EXHIBIT "B"

CURRICULUM VITAE

THOMAS J. LANDGRAF, O.D., F.A.A.O.

PERSONAL

Date of Birth: February 2, 1962
Place of Birth: Avon Lake, Ohio

Home Address: 3178 Central Ave
Memphis, TN 38111
(901) 458-2772
(901) 489-5992

Business Address: Southern College of Optometry
1245 Madison Avenue
Memphis, TN 38104
(901) 722-3319

EDUCATION

The Eye Institute at the Pennsylvania
College of Optometry
Philadelphia, Pennsylvania
Residency in Primary Care, July, 1988-July 1989

The Illinois College of Optometry
Chicago, Illinois
Doctor of Optometry, Cum Laude, May, 1988

Ripon College, Ripon, WI
B.A., Biology/Biology-Chemistry, May, 1984

EXPERIENCE

Chief, Advanced Care Ocular Disease Service, Division of Clinical
Education, Southern College of Optometry, 1996-present.

Professor, Southern College of Optometry, 2006-present.

Associate Professor, Divisions of Biomedical and Clinical Education,
Southern College of Optometry, 1998 - 2006.

Assistant Professor, Divisions of Biomedical and Clinical Education,
Southern College of Optometry, 1992 - 1998.

Assistant Professor, Division of Clinical Education, Illinois College of
Optometry, 1990 - 1992.

Clinical Instructor, Division of Clinical Education, Illinois College
Optometry, 1989 - 1990.

Thomas J. Landgraf, O.D.

Curriculum Vitae

Page 2

EXPERIENCE (continued)

Primary Care Resident, Pennsylvania College of Optometry, 1988-1989

TEACHING

Elective Course and Lab, Illinois College Of Optometry, Injections For The Primary Care Optometrist, March 2006

*Pathology and Systemic Disease I / *Basic Pathology, Instructor of Record for this two hour course, 1992-2001.*

**Course name changed in 1997 ~ *Organ System Pathology*

*Pathology and Systemic Disease II / *Organ System Pathology, Instructor of record for this three hour course, 1992-2000. *Course name changed in 1997.*

Ocular Pathology and Disease: Retinal Vascular Disease (10 lecture hours), 1996-1998.

Ophthalmic Lasers for the Anterior Segment Laboratory, 1996-present.

Optometry Methods: Primary Care Evaluation of the Pediatric Patient (7 lecture hours), 1990-1992.

Vision Care of Special Populations: Pediatric Emergencies (2 lecture hours), 1990-1992.

Clinic Orientation: The Pediatric Patient in Primary Care (1 lecture hour), 1990-1992.

Primary Care Resident Supervisor, 1992-1998.

Memphis Mental Health Institute, Clinical Instructor and Administrator, 1992-1995.

Pathology/Advanced Care Service Clinical Instructor, 1992-1995.

Clinical Methods Laboratory Instructor, 1989-1992.

Treatment of Binocular Anomalies Laboratory Instructor, 1990.

Strabismus/Amblyopia Laboratory Instructor, 1989.

Advanced Care Service Clinical Instructor and Administrator, 1990-1992.

Primary Care Service Clinical Instructor, 1989-present.

Pediatric/Binocular Vision Service Clinical Instructor, 1989-1990.

Thomas J. Landgraf, O.D.

Curriculum Vitae

Page 3

CONTINUING EDUCATION COURSES

Urgencies and Emergencies, PA College of Optometry, July 12, 1989.

Comotio Retinae, PA College of Optometry, March, 1989.

Angioid Streaks, PA College of Optometry, January, 1989.

Branch Retinal Artery Occlusion, PA College of Optometry, October, 1988.

Gonioscopy/Binocular Indirect Ophthalmoscopy Laboratory, IL College of Optometry, June 11, 1990.

Dilation and Irrigation/Prescription Writing Laboratory, IL College of Optometry, July, 1990.

Gonioscopy/Retinal Biomicroscopy Laboratory, IL College of Optometry, June, 1991.

Case Discussions: Epidemic Keratoconjunctivitis/Dacryocystitis, IL College of Optometry, July 19, 1991.

Pharmacology For The Paraoptometric, IL College of Optometry, October 27, 1991.

Case Discussions: Retinoschisis, Scleral Depression, Sickie Cell Retinopathy, June, 1992.

Optometric Care of Patients with Infectious and Sexually Transmitted Diseases, Southern College of Optometry, April, 1993.

HIV Transmission Concerns During Optometric Exams, Tennessee Optometric Association, Memphis, TN, June, 1993.

Foreign Body Removal Workshop, Southern College of Optometry, April, 1994.

Ocular Hypertension or Missed Glaucoma, Southern College of Optometry, April, 1994.

Clinical Evaluation of Glaucoma Patients Laboratory, Southern College of Optometry, April, 1994.

Oculosystemic Disease, Jackson, MS, August, 1994.

Ocular Side Effects of Selected Systemic Drugs, Jackson, MS, August 1994.

Thomas J. Landgraf, O.D.

Curriculum Vitae

Page 4

CONTINUING EDUCATION COURSES (continued)

Optometric Management of HIV and AIDS, Southern College of Optometry, September, 1995.

Occupational Exposure to Bloodborne Pathogens, July, August, October, 1995 and January, October 1996 and February 1998.

Lab Instructor for Injections course given by Southern College of Optometry, Knoxville, TN, January, October 1996, 1998; taught both intravenous and periocular injections.

Optometric Management of HIV and AIDS, American Academy of Optometry Meeting, Orlando, FL, December, 1996.

Fluorescein Angiography, Tennessee Chapter of American Academy of Optometry, Southern College of Optometry, December, 1996.

Introduction to Neoplasia, Southern College of Optometry, April, 1997.

Lumps and Bumps: Pre-Malignant and Malignant Lesions, Southern College of Optometry, April, 1997.

Immunology Update, Top Five for the O.D., Memphis, TN, September, 1997.

Basic Neoplasia, Southwest Conference Optometry, Dallas, TX, March, 1998.

Lumps and Bumps: Pre-Malignant and Malignant Lesions, Southwest Conference Optometry, Dallas, TX, March, 1998.

Lab Coordinator for Injections Course, North Carolina Optometric Association Spring CE, Myrtle Beach, SC, June, 1998.

Optometric Management HIV and AIDS, East West Eye Conference, Cleveland, OH, October, 1998.

Lumps and Bumps: Pre-Malignant and Malignant Lesions, East West Eye Conference, Cleveland, OH, October, 1998.

Microbiology / Immunology Review, How To Maximize Laboratory Testing, Clinical Case Challenges, Management of Anaphylaxis and Other In-Office Emergencies, Ocular Effects of Systemic Meds, West Virginia Optometric Association Annual Conference, Charleston, WV, November, 1998.

Thomas J. Landgraf, O.D.

Curriculum Vitae

Page 5

CONTINUING EDUCATION COURSES (continued)

Advanced Eye Care Procedures: Eyelids, Lacrimal System, Conjunctiva and Cornea, Southern Eye Associates, January 1999.

Eye Disease In Kids, Southern College of Optometry, April, 1999.

Autoimmunity and the Eye, Southern College of Optometry, April, 1999.

Laboratory-The GDX Nerve Fiber Analyzer and Lecture: New Instrumentation for the Diagnosis and Management of Glaucoma, Edmonton; Alberta, Canada, April, 1999.

Perspectives on Anterior Uveitis 1999 and Lumps and Bumps, Eye Institute of the South, Dothan, AL, April, 1999.

Lumps and Bumps, SCO Spring CE, Memphis, TN, 2000.

Eye Disease In Kids and Autoimmunity and the Eye, Southwest Contact Lens Society, San Antonio, TX, September 2000.

Update on Optometric Management of HIV and AIDS and Lumps and Bumps and Autoimmunity and the Eye and Eye Disease In Kids, East West Eye Conference, Cleveland, Ohio, October 2000.

Heidelberg Retinal Angiography, SCO Spring CE, Memphis, TN, 2001.

New Instrumentation For The Diagnosis and Management of Glaucoma and Optometric Oncology and Ocular Side Effects of Systemic Drugs and Eye Disease In Kids, LSU Optometric CE, Lafayette, LA, May, 2001.

Looking In The Eye Of The Infant And Young Child, SECO International, Atlanta, GA, February, 2002.

Optometric Management of Eye Pain, Southern College of Optometry Spring CE, Memphis, TN, April 2002

Injections Course and Laboratory for North Carolina State Board , Myrtle Beach, SC, June 2002

Lumps & Bumps / Eye Disease In Kids, SCO Fall CE, October 2002

Injections Course and Laboratory, North Carolina State Board Sponsored Fall CE Program, November 2002

Thomas J. Landgraf, O.D.

Curriculum Vitae

Page 6

CONTINUING EDUCATION COURSES (continued)

Laboratory Testing for the Optometrist, Wyoming Optometric Association Winter CE Program, Cheyenne, WY, February 2003

West Virginia Systemic Pharmaceuticals Course, West Virginia Optometric Association, Microbiology/Immunology Review, Narcotic Agents in Primary Eye Care, Oral Anti-Infective Medications, Injectable Medications, Clinical Case Challenges, Charleston, WV, November 2003

Clinical Case Challenges, Southern College of Optometry Spring CE, Memphis, TN, April 2004

Pediatric Eye Disease, Southern College of Optometry Spring CE, Memphis, TN, April 2004

Overview of Injections for North Carolina Optometrists, North Carolina Optometric Society, November 2005

Overview of Injections for North Carolina Optometrists, North Carolina Optometric Society, February 2006

Arizona Optometric Association Continuing Education Program, Autoimmunity and the Eye, Optometric Management of Eye Pain, Update on Instrumentation Used for the Diagnosis and Management of Glaucoma, Tom's Top 10: Ocular Side Effects of Selected Systemic Medications, Tucson, AZ, May 2006.

Overview of Injections for North Carolina Optometrists, Lab and Lecture, North Carolina Optometric Society Spring CE, Myrtle Beach, SC, June 2006

Maryland Optometric Association Continuing Education Program, Primary Care Clinical Case Challenges In Neuro-Optometry, Baltimore, MD, June 2006

Georgia Optometric Association Fall Continuing Education Program, Autoimmunity And The Eye, Primary Care Clinical Case Challenges, Athens, GA, September 2006.

Red Eye Workup (Paraoptometric lecture) and Injections Lab, North Carolina Fall Continuing Education Program, Asheville, NC, November 2006.

*Injectables for the Primary Care Optometrist, American Academy of Optometry
Ellerbrock CE, Denver, CO, December 2006.*

Thomas J. Landgraf, O.D.

Curriculum Vitae

Page 7

PRESENTATIONS

Traumatic Retinopathy: Commotio Retinae, Landgraf, T.J., Nyman, J. American Academy of Optometry Meeting, New Orleans, December, 1989.

Prognosis of Laser Treatment of Neovascular Membranes in Angioid Streaks, Landgraf, T.J. American Academy of Optometry Meeting, Nashville, December, 1990.

Congenital Origin Consideration in Downbeat Nystagmus. Landgraf, T.J. American Academy of Optometry Meeting, Anaheim, December, 1991

Consideration of Astrocytic Hamartoma Transformation in a Patient with Tuberous Sclerosis. Landgraf, T.J., McGeehee, D. American Academy of Optometry Meeting, Orlando, December, 1992.

Acute Dissociated Vertical Nystagmus of Significant Intensity Following Treatment of Retinal Detachment. Landgraf, T.J. American Academy of Optometry Meeting, Boston, December, 1993.

Concomitant Presence of Vitelliform and Butterfly Dystrophies: Continuum Consideration and Evolution in Ten Years. Landgraf, T.J., Sharpe, J, Evans, D. American Academy of Optometry Meeting, San Diego, December, 1994.
Etiologic Considerations of Central Retinal Vein Occlusion a Seventeen Year-Old Patient. Landgraf, T.J., Driver, A. American Academy of Optometry Meeting, Orlando, December, 1996.

The Importance of Differential Diagnosis of Amelanotic Choroidal Nevus, AAO Meeting, Orlando, December, 2000.

Multiple Evanescent White Dot Syndrome With Choroidal Neovascular Membrane: A Case Report, AAO Meeting, Philadelphia, December, 2001.

Differential Diagnostic Consideration of a Hyperviscosity-Like Retinal Syndrome In a Patient With Non-Hodgkin's Lymphoma, AAO Meeting, Philadelphia, December, 2001.

Vision Loss In A Seventeen Year-Old Patient With Controlled Congenital Glaucoma, AAO Meeting, San Diego, December, 2005.

Malignant Hypertension In A Monocular Patient: A Diagnostic Dilemma, AAO Meeting, San Diego, December, 2005.

OCT Use In The Differential Diagnosis Of Megalopapilla Versus Glaucoma, AAO Meeting, Denver, December 2006.

Thomas J. Landgraf, O.D.

Curriculum Vitae

Page 8

PRESENTATIONS (continued)

Long Term Follow-Up Of An Unusual Case Of Ocular Ischemic Syndrome, AA Meeting, December 2006.

PUBLICATIONS

Landgraf, Thomas J and Diciara Pastore Louise: TPA Confidence Builder, A Free Course on Managing and Minimizing the Adverse Effects of Topical Agents. Optometric Management, April, 1996.

**PROFESSIONAL
ACTIVITY**

Manuscript Review, Journal of the American Optometric Association

Illinois Optometric Association

American Optometric Association

Tennessee Chapter of American Academy of Optometry

Item Writing Workshop for National Board of Examiners in Optometry, Bethesda, MD, September, 1993

Tennessee Optometric Association

West Tennessee Optometric Society

Advisory Board, Vision America of Memphis

NBEO Clinical Examiner, Senior Examiner, Assistant Chief Examiner

Legal Optometric Consultant

Fellow, American Academy of Optometry

**SERVICE
ORGANIZATIONS**

Faculty Advisor, Tomb and Key Optometric Honorary Fraternity

Medical Records Audit Committee, 1992

Admissions Committee, 1991-1992

Student Affairs Committee, chairperson and member, 1992-present

Faculty Development Week Committee, 1996

Thomas J. Landgraf, O.D.

Curriculum Vitae

Page 9

SERVICE ORGANIZATIONS (continued)

Promotions Committee, 1996

Continuous Quality Improvements Committee, 1996-97

Faculty Advisor, BSK Honorary Fraternity

Chair, Promotions Committee, 2002

Chair, Privileging Committee, 2005-present

Faculty Advisor, Student Government Association, 2005-present

Faculty Advisor, Gold Key Honorary Fraternity, 2005-present

HONORS AND AWARDS

*Charlotte H. Potter Memorial Award, IL College of Optometry,
May, 1988.*

Faculty of the Year, 1993-1994

Teacher of the Year, 1995-96

Teacher of the Year, 1997-98

Hooded Class of 1998 at Graduation

Hooded Class of 2000 at Graduation

Optometric Oath Reader for Class of 2003 at Graduation

Teacher of the Year, 2003-2004

Teacher of the Year, 2004-2005

BSK Clinical Faculty of the Year, 2004-2005

Teacher of the Year, 2005-2006

**OPTOMETRIC
LICENSES**

Illinois #046-00008197 (currently inactive)

Pennsylvania #091-000871 (currently inactive)

Tennessee #1778

Injection certified in the State of Tennessee

REFERENCES

Professional

Tammy Than, O.D.
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Thomas J. Landgraf, O.D.

Curriculum Vitae

Page 10

Professional REFERENCES (continued)

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Southern College Of Optometry
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